Supreme Court, U. S.
FILED
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MICHAEL RODAK, JR., CLERK

IN THE

Supreme Court of the United States

NO. 77-1112

ANTHONY DUKE,
Petitioner,

v.

UNITED STATES STEEL CORPORATION, STAUFFER CHEMICAL COMPANY, and PHOSPHATE CHEMICALS, INC.,
Respondents.

PETITION FOR A WRIT OF CERTIORARI
To the United States Court of Appeals for the Fifth Circuit

ANTHONY DUKE
P. O. Box 712
Winnie, Texas 77665
(713) 296-2272
Petitioner, Pro-Se.

Alpha Law Brief Co., One Main Plaza, No. 1 Main St., Houston, Texas 77002

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IN THE

Supreme Court of the United States

NO. _____

ANTHONY DUKE,
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UNITED STATES STEEL CORPORATION, STAUFFER CHEMICAL COMPANY, and PHOSPHATE CHEMICALS, INC.,
Respondents.

PETITION FOR A WRIT OF CERTIORARI To the United States Court of Appeals for the Fifth Circuit

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INTRODUCTORY STATEMENT

The Petitioner, Anthony Duke, respectfully petitions this Court for a Writ of Certiorari to review the United States District Court for the Southern District of Texas. Judgment, originally docketed as United States Steel Corporation v. Anthony Duke v. Third Party Defendants, Stauffer Chemical Company and Phosphate Chemical Company, Inc., handed down on December 13, 1976, and affirmed by the Fifth Circuit Court of Appeals, on September 27, 1977, and Petition for Rehearing before

the Fifth Circuit Court of Appeals was denied on October 26, 1977.

The Judgment and supporting evidence of the Southern District Court as affirmed by the Fifth Circuit Court of Appeals is appended, bound with this Petition, and marked Appendix "A".

The opinion of the United States Court of Appeals for the Fifth Circuit is appended, bound with this Petition, and marked Appendix "B".

Petition for Rehearing was denied by the United States Court of Appeals for the Fifth Circuit, on October 26, 1977, and the Order denying the Petition for Rehearing is appended, bound with this Petition, and marked Appendix "C".

An Order granting the Petitioner a Stay of the Mandate was issued on November 8, 1977, granting the Petitioner a Stay until December 8, 1977, said Stay is appended, bound with this Petition, and marked Appendix "D".

JURISDICTIONAL STATEMENT

Petitioner seeks review of the Judgment of the United States District Court as affirmed by the Fifth Circuit Court of Appeals and Petition for Rehearing denied, on October 26, 1977, by the Fifth Circuit Court of Appeals.

Petitioner believes that this Court has jurisdiction to review said Judgment by Writ of Certiorari by virtue of 28 United States Code, Section 1254.

QUESTIONS PRESENTED FOR REVIEW

(1) Whether or not Petitioner's rights under the 14th Amendment of the Constitution, were abrogated, by the

Trial Court, Judge Seals, on January 26, 1976, when Judge Seals asked Respondents' attorneys if they would accept the Petitioner's attorney's offer, made on December 1, 1975, without first requesting from the Petitioner whether or not the offer still stood.

(2) Whether or not there is sufficient evidence to sustain the Trial Court's determination that the Petitioner's attorney's Oral Offer, on December 1, 1975, included all the stipulations and agreements and was the same and identical to the Written Settlement Agreement mailed to the Petitioner's attorney after the January 26, 1976 Hearing.

(3) Whether or not the Written Settlement Agreement is enforceable upon the Petitioner, even though neither the Petitioner nor his attorney signed it.

(4) Whether or not the Petitioner's rights under the 14th Amendment of the Constitution of the United States were abrogated, by the Trial Court by enforcing Judgment per Written Settlement Agreement, which was unacceptable to the Petitioner, and never signed by the Petitioner or his attorney.

(5) Whether or not the Trial Court, Judge Seals abrogated the Petitioner's rights under Rule 68 of the Federal Rules of Civil Procedure, by enforcing Judgment, as per Written Settlement Agreement, when neither the Petitioner nor his attorney signed or agreed to the Written Settlement Proposal.

(6) Whether or not there is sufficient evidence to support the Trial Court in its finding that the Oral Offer made by Petitioner's attorney, on December 1, 1975, was still open, on January 26, 1976.

(7) Whether or not there is sufficient evidence to support the Trial Court in its findings that the Petitioner's attorney's Oral Offer, made on December 1, 1975, included the same stipulations and agreements as the Court's enforcement of the January 26, 1976, Written Settlement Proposal, as mailed to the Petitioner.

(8) Whether or not the Trial Court has the power vested in it by the Supreme Court, to enforce upon the Petitioner a Written Settlement Proposal, which he nor his attorney neither signed nor agreed to sign.

CONSTITUTIONAL PROVISIONS INVOLVED

This case involves the Seventh Amendment to the Constitution of the United States and Rule 68 of the Federal Rules of Civil Procedure.

The Seventh Amendment provides:

> "In suits at Common Law where the value in controversy shall exceed twenty dollars, the right of Trial by Jury shall be preserved, and no fact tried by a Jury, shall be otherwise re-examined in any Court of the United States, than according to the Rules of the Common Law.

Rule 68 of the Federal Rules of Civil Procedure provides:

> "If within ten (10) days after the service of the offer the adverse party serves written notice that the offer is accepted, either party may then file the offer and notice of acceptance together with proof of service thereof and thereupon the Clerk shall enter Judgment. An offer not accepted shall be deemed withdrawn and evidence thereof is not admissible except in a proceeding to determine costs."

STATEMENT OF THE CASE

Petitioner, Anthony Duke complaining of Error of the Lower District Court in granting of "Judgment in Accordance With Settlement Agreement" in favor of Respondents, United States Steel Corporation, Et Al, and requests this Honorable Supreme Court to grant this Petitioner's Application for Writ of Certiorari.

That Petitioner did charge approximately $12,000.00 (Twelve thousand and no/100) dollars worth of fertilizer to Respondent, through Respondent's agent, Modern Crop Chemicals, Inc., of El Maton, Texas. That Petitioner used this fertilizer on approximately seven hundred twenty-two acres (722), of his rice crops during the year 1971, and to Petitioner's and his father, E. P. Duke's opinion, the fertilizer burnt all of the rice severely and it killed approximately 50% of the rice plants. That Petitioner did experiment very closely with the fertilizer on rice plants during an experiment at Texas A&M University Rice Experiment Station, at Beaumont, Texas, under Dr. Fred Turner. Although, all identical field conditions cannot be duplicated exactly, there was sufficient evidence to these experiments to conclude that the fertilizer could have caused the damage to Petitioner's rice crops.

That the entire $12,000.00 (Twelve thousand and no/100) dollars worth of charges on the open account was not the fertilizer which had caused the damage to Petitioner's rice crops, therefore, Petitioner felt as though he owed approximately $6,000.00 (Six thousand and no/100) Dollars of the bill of which did not include the defective fertilizer.

On December 1, 1975, Petitioner's attorney offered to pay $6,750.00 (Six thousand seven hundred fifty and no/100) dollars on the bill. That Respondents' attorney refused the offer and asked Petitioner if he would pay some approximately $9,000.00 (Nine thousand and no/100) dollars on the bill. Petitioner refused this offer, and Petitioner made an offer, for Respondents to pay for the damages caused Petitioner's rice crops, and Petitioner would pay Respondents the entire bill. Respondents refused this offer, and Petitioner made another offer to Respondents that each take nothing and forget the suit. Respondents refused this offer. That the December 1, 1975, Pre-Trial Conference concluded with all offers being refused on both sides.

That on December 8, 1975, Judge Woodrow Seals signed and entered an Order (Appendix A), which in part stated:

> "In order to provide for the orderly disposition of this cause, it is hereby Ordered,"
>
> *Paragraph No. 5.*
>
> "This case shall be called for trial in its due order during the January-February term, with reasonable notice to counsel to allow for notification of and travel by out of state witnesses."

That this Order of December 8, 1975, was requested by Respondents and signed and approved by all the attorneys in the case and nowhere in the Order do Respondents make any reference to the fact that Respondents were considering any offer made by Petitioner, on December 1, 1975.

In fact the Order says:

> "On December 1, 1975, the Court held a Pre-Trial Conference in the above entitled and numbered cause. In connection with this conference, it is noted that this cause has been set for trial on several occasions, that the Defendant and Third Party Plaintiff, Anthony Duke has had in his possession since February 5, 1975, a copy of the Pre-Trial Order prepared by counsel for Plaintiff and Counter-claim Defendant United States Steel and Third Party Defendant Stauffer Chemical Company, and that present counsel for Defendant and Third Party Plaintiff Anthony Duke has had such Pre-Trial Order in his possession since his appearance in this Case on May 5, 1975. In order to provide for the orderly disposition of this cause it is hereby ordered:"

On January 16, 1976, the District Court entered an Order that ordered Anthony Duke, and his attorney to appear on January 23, 1976, and show cause why the Petitioner's Counter-Claim should not be dismissed with prejudice. That this Hearing was postponed until January 26, 1976, and Petitioner, Anthony Duke being busy preparing his cropland for planting was not present at the January 26, 1976, Hearing. That on January 26, 1976, while in the Court's Chambers discussing Respondent's Motion for Dismissal of Petitioner's Counter-Claim for failure of Petitioner's attorney to comply with the December 8, 1975, Order, (Attached) of the Court, after the Court overruled Respondent's Motion for Dismissal, the Court asked Respondent's if they would still accept Petitioner attorney's offer, made on December 1, 1975. Respondents agreed to accept, however, Petitioner's attorney stated to the Court that he would have to discuss the offer with Petitioner, since he did not know whether or not the offer was still open. Petitioner attorney tele-

phoned Petitioner and told him of the above. Petitioner told his attorney that he would be willing to pay $6,-750.00 (Six thousand seven hundred fifty and no/100) Dollars, on the bill. However, Petitioner did not and would not dismiss any claims or assertions against the defective fertilizer. That Petitioner would only settle the suit at hand with Respondents, Et, Al. That Petitioner told his attorney that he had a suit against Modern Crop Chemicals, Inc., the agent of Respondent, who had sold and delivered the fertilizer. The suit was in Brazoria County, State District Court, Angleton, Texas. That at no time did the Petitioner nor his attorney agree to release any assertions against the fertilizer as being defective. That Petitioner wished to proceed to make his claim against the defective fertilizer in State Court against Modern Crop Chemicals, Inc. However, Petitioner did agree to give his own release to Respondent's only and not release the claims he had in State Court against Modern Crop Chemicals, Inc., and the defective fertilizer. That Petitioner was told that Respondents were making the offer to settle. Petitioner instructed his attorney to request the offer in writing, for Petitioner wanted to see it in black and white. That within the next few days Petitioner fired his attorney. That finally after a long period of time, Petitioner finally received a copy of the Written Settlement Proposal, as he had requested. That pursuant to the terms in it as understood by Petitioner, the offer had expired by the elapse of the ten (10) days time, therefore, Petitioner did nothing.

That Respondents filed a Motion to have Judgment as per the Written Settlement Agreement. That after a Hearing on November 30, 1976, the Court granted and entered such a Judgment on December 13, 1976. That

Petitioner appealed this Judgment to the Fifth Circuit Court of Appeals, and it was affirmed. Petitioner was denied his Motion for Rehearing to the Fifth Circuit Court of Appeals, therefore, Petitioner finds himself unable to accept the District Court's ruling and Appeals to this the Honorable Supreme Court of the United States of America. That Petitioner feels that the District Court exceeded all realms of power vested it by the Supreme Court and the Constitution and Laws of the United States of America. That the District Court was without power and authority, on January 26, 1976, to ask Respondents if they would accept an offer made by Petitioner's attorney on December 1, 1975, without first asking Petitioner if he would still be willing to make such an offer. That the District Court was without power to enforce, on December 13, 1976, Judgment per Settlement Agreement, without the consent of Petitioner or his attorney, to this Written Settlement Agreement. That the District Court did error in granting the Judgment without giving Petitioner the opportunity to a Jury Trial, as his attorney had requested at the beginning of this suit.

The Court's finding that specific terms of Settlement existed on December 1, 1975, and was never rescinded and was outstanding, on January 26, 1976, and was accepted by Respondents on that day, is in direct conflict with the testimony of Mr. C. Bruce Stratton, attorney for Petitioner, who states and I quote from his testimony given at the trial on November 30, 1976:

> "Mr. Duke, we hadn't reduced it to writing at that time. It was simply an oral agreement to settle the case. It would have to be reduced to writing. At that time there wasn't any agreement, a written agreement, because there hadn't been one drawn up."

> "At that time Mr. Broesche, (attorney for Respondents) indicated that if it was acceptable, that he would prepare the papers and would circulate them."
>
> As the record will indicate these papers were never signed by the Petitioner nor his attorney. SEE exhibit Appendix A, entitled *"Settlement Agreement."*

That pursuant to Rule 68 of the Federal Rules of Civil Procedure, if in fact any offer was made on January 26, 1976, the Written Settlement Agreement proposal, as mailed to Petitioner was not accepted in writing within ten (10) days as required by Rule 68;

"If within ten (10) days after the service of the offer the adverse party serves written notice that the offer is accepted together with proof of service thereof and thereupon the Clerk shall enter Judgment. An offer not accepted shall be deemed withdrawn and evidence thereof is not admissible except in a proceeding to determine costs."

See Appendix A-4, Pages A-9, A-10, A-11, A-12:

This Written Settlement Agreement was prepared by Respondent's attorneys and mailed to C. Bruce Stratton, attorney for the Petitioner, on or about February 17, 1976, this instrument was not signed nor approved either in form or contents by the Petitioner or his attorney.

CONCLUSION

Petitioner respectfully submits that a review of the record and the appendices attached hereto would indicate that this Petition for Writ of Certiorari should be granted,

and the Judgment of the Lower Court and the Fifth Circuit Court of Appeals which affirmed the Judgment of the Lower Court should be set aside and the Judgments of such be set aside and reversed.

Respectfully submitted,

ANTHONY DUKE
P. O. Box 712
Winnie, Texas 77665
(713) 296-2272
Petitioner, Pro-Se.

APPENDIX

APPENDIX "A"

UNITED STATES STEEL CORPORATION,
Plaintiff,

v.

ANTHONY DUKE,
Defendant,

v.

STAUFFER CHEMICAL COMPANY
and PHOSPHATE CHEMICALS, INC.,
Third Party Defendants

Civil Action No. 72-G-17

In The United States District Court
For The Southern District of Texas
Houston Division

December 13, 1976

JUDGMENT

For the reasons stated in the Findings of Fact and Conclusions of Law signed and entered this day, the pending Motions For Judgment In Accordance With Settlement Agreement are GRANTED and Judgment is hereby entered enforcing the oral contract of settlement between the parties. Pursuant to and in conformity with such contract, it is hereby ORDERED and ADJUDGED

that United States Steel Corporation shall have and recover judgment against Anthony Duke in the amount of Six Thousand Seven Hundred Fifty Dollars ($6,750,-00), with interest thereon from the date of this judgment at nine percent (9%) annum, as provided by law. The claims of all parties asserted in this litigation are hereby dismissed with prejudice, all costs of Court are assessed against the parties incurring same, with any reimbursement of taxable costs between the parties themselves to be controlled by the contract of settlement between the parties, all other relief requested herein is denied.

The Court shall file this Judgment and provide all parties with a true copy.

DONE at Houston, Texas, this 13th day of December, 1976.

/s/ _____
United States District Judge

APPENDIX "A-1"

UNITED STATES STEEL CORPORATION,
Plaintiff,

v.

ANTHONY DUKE,
Defendant,

v.

STAUFFER CHEMICAL COMPANY and
PROSPHATE CHEMICALS, INC.,
Counterclaim Defendants.

Civil Action No. 72-G-17

In the United States District Court
for the Southern District of Texas
Houston Division

December 8, 1975

ORDER

On December 1, 1975, the Court held a pretrial conference in the above entitled and numbered cause. In connection with this conference, it is noted that this cause has been set for trial on several occasions, that the defendant and third party plaintiff Anthony Duke has had in his possession since February 5, 1975, a copy of the pretrial order prepared by counsel for plaintiff and counterclaim defendant United States Steel and third party defendant Stauffer Chemical Company, and that present counsel for defendant and third party plaintiff Anthony Duke has had such pretrial order in his pos-

session since his appearance in this case on May 5, 1975. In order to provide for the orderly disposition of this cause, it is hereby ORDERED:

(1) On or before December 10, 1975, counsel for Anthony Duke shall serve upon counsel for United States Steel and Stauffer Chemical Company, his list of witnesses and evidence in the manner required by this Court's written instructions to counsel regarding the preparation of pre-trial orders; Should counsel for United States Steel and Stauffer not be provided with such list of evidence and witnesses by December 10 in the manner indicated above, the counterclaim and third party action of Anthony Duke shall be dismissed with prejudice.

(2) United States Steel and Stauffer shall provide to counsel for Anthony Duke on or before December 10, 1975, any supplementation to its list of evidence and witnesses as presently contained in its proposed pretrial order which has been filed with this Court and served upon Anthony Duke. Any supplementation shall likewise comply with this Court's written instructions to counsel regarding the preparation of pretrial orders.

(3) United States Steel and Stauffer are granted leave of Court to engage in reasonable discovery arising out of the information provided by Anthony Duke in compliance with paragraph (1) of this Order, including without limitation the right to depose any expert witnesses identified by Anthony Duke. Anthony Duke may initiate additional discovery only if a supplementary list of evidence or witnesses is served by United States Steel and/or Stauffer in compliance with paragraph (2) of this Order, and such discovery shall relate only to such supplemental information.

(4) Counsel for Anthony Duke shall work with other counsel in connection with the completion of the pretrial order in this cause so as to enable the filing of a completed, agreed pretrial order, together with attachments, on or before January 5, 1976. Should such pretrial order not be filed by such date due to a failure on the part of Anthony Duke or his counsel to seasonably provide to other counsel the necessary materials relating to Anthony Duke's claims and/or defenses, the counterclaim and third party action of Anthony Duke shall be dismissed with prejudice. This Order does not require the filing of supporting citation or authorities or trial legal memorandum by January 5, 1976, and such may be filed with the Court at any time before the commencement of trial.

(5) This case shall be called for trial in its due order during the January-February term, with reasonable notice to counsel to allow for notification of and travel by out-of-town and out-of-state witnesses.

ENTERED this 8th day of December, 1975.

/s/ _____
United States District Judge

APPROVED:

/s/ _____
C. Bruce Stratton
Counsel for Anthony Duke

/s/ _____
F. Walter Conrad
Counsel for Stauffer Chemical Company

/s/ _____
Travis G. Broesche
Counsel for United States Steel Corporation

APPENDIX "A-2"

UNITED STATES STEEL CORPORATION,
Plaintiff

v.

ANTHONY DUKE,
Defendant

v.

STAUFFER CHEMICAL COMPANY, and
PHOSPHATE CHEMICALS, INC.,
Third-Party Defendants

Civil Action No. 72-G-17

In The United States District Court
For the Southern District of Texas
Houston Division

January 16, 1976

ORDER

Defendant in the above action, Anthony Duke, and his counsel will attend this court on Friday, January 23, 1976 at 9:00 A.M. to show cause in person why the counterclaim should not be dismissed with prejudice.

The Clerk will file this Order and furnish a true copy to all parties.

Done at Houston, Texas, this 16th day of January, 1976.

/s/ _____
United States District Judge

APPENDIX "A-3"

VINSON, ELKINS, SEARLS, CONNALLY, & SMITH
Attorneys at Law
First City National Bank Building
Houston, Texas 77002

February 18, 1976

Mr. C. Bruce Stratton
P. O. Box 939
Liberty, Texas 77575

RE: United States Steel Corporation v.
Anthony Duke

Dear Bruce:

Enclosed for review and execution are the papers necessary to dispose of this litigation. The only change from the documents forwarded to you on February 9 are found in paragraphs two and three of the Settlement Agreement and relate to releases by and between United States Steel and Stauffer. They in no way affct your cleint's interest.

If these papers meet with your approval, would you and Anthony please execute two of the copies of the Settlement Agreement and return them to me. The third copy is for your file. Also, please execute and return to me the originals of the Joint Motion and Judgment. The xerox copy is for your file.

Please also forward to me at the same time Anthony Duke's certified check in the amount of $6,750.00. This check should be made payable to USS Agri - Chemicals, Division of United States Steel Corporation.

Bruce, I hope that you can expedite this matter with Anthony so that we can get this case off the docket. Please do not hold up execution and return of these documents if you have not received from Stauffer payment for your court costs. I have not received such payment either, but Walter Conrad has assured me that payment will be forthcoming shortly.

Please let me know if any problems develop.

Very truly yours,

/s/
Travis C. Broesche

212/46E
Enclosures

APPENDIX "A-4"

UNITED STATES STEEL CORPORATION,
Plaintiff

v.

ANTHONY DUKE,
Defendant

v.

STAUFFER CHEMICAL COMPANY, and
PHOSPHATE CHEMICALS, INC.,
Third-Party Defendants

Civil Action No. 72-G-17

SETTLEMENT AGREEMENT

This Agreement made this 18th day of February, 1976 by and between ANTHONY DUKE, UNITED STATES STEEL CORPORATION (hereinafter referred to as "United States Steel") and STAUFFER CHEMICAL COMPANY and PHOSPHATE CHEMICALS, INC. (hereinafter jointly referred to as "Stauffer").

W I T N E S S E T H :

WHEREAS, United States Steel has filed its Complaint asserting an open account claim against Anthony Duke, and

WHEREAS, Anthony Duke, by counterclaim and third party action, has asserted claims against United States Steel and Stauffer; and

WHEREAS, without admitting any facts of liability whatsoever, the parties to this agreement desire to settle and resolve all claims and controversies between them arising out of the facts and circumstances made the subject matter of this litigation.

NOW, THEREFORE, in consideration of the releases and covenants contained herein and the payments detailed below, the parties hereto agree as follows:

(1) Subject to the further provisions of this Settlement Agreement, Anthony Duke, by these presents, does, for himself, his successors, heirs and assigns, hereby release and forever discharge United States Steel and Stauffer, their respective officers, employees, representatives, successors and assigns, of and from all manner of claims, costs, losses, expenses, liabilities, demands or causes of action of whatever nature, known or unknown, in law or in equity, which Anthony Duke has asserted or could have asserted in this cause, or now has or may hereafter acquire, arising out of the facts and circumstances made the subject matter of this cause, including, without limitation, his purchase and use during 1971, of fertilizer and/or other agricultural chemical products purchased from United States Steel and/or manufactured by Stauffer.

(2) Subject to the further provisions of this Settlement Agreement, United States Steel, by these presents, does, for itself, its successors and assigns, hereby release and forever discharge, Stauffer and Anthony Duke, his successors, heirs, and assigns, of and from all manner of claims, costs, losses, expenses, liabilities, demands or causes of action, of whatever nature known or unknown,

in law or in equity, which United States Steel has or could have asserted against Stauffer and Anthony Duke, in this cause, or which United States Steel now has or may hereafter acquire, arising out of the facts and circumstances made the subject matter of this cause, including, without limitation, the purchase by Anthony Duke during 1971 of fertilizer and/or other agricultural chemical products from United States Steel.

(3) Subject to the further provisions of the Settlement, Stauffer, by these presents, does, for itself, its successors and assigns, hereby release and forever discharge, United States Steel and Anthony Duke, his successors, heirs and assigns, of and from all manner of claims, costs, losses, expenses, liabilities, demands or causes of action, of whatever nature, known or unknown, in law or in equity, which Stauffer has or could have asserted in this cause.

(4) Contemporaneously with the execution of this Settlement Agreement, Anthony Duke shall deliver to United States Steel his certified check in the amount of Six Thousand Seven Hundred Fifty Dollars ($6,750.00), the receipt of which is hereby acknowledged.

(5) In partial consideration for the settlement of this cause, Stauffer has agreed to pay all chargeable court costs incurred by United States Steel and Anthony Duke. Statements of such costs have been submitted to Stauffer by United States Steel and Anthony Duke, the accuracy of such statements accepted by Stauffer, and payment to Anthony Duke and United States Steel of such costs have been made contemporaneously with the execution of this Settlement Agreement.

(6) Anthony Duke hereby states and warrants that he has not conveyed to any other person any interest in the cause or causes of action he has asserted herein against United States Steel and Stauffer.

(7) Anthony Duke, United States Steel, and Stauffer hereby agree to execute, by and through their respective attorneys of record, all pleadings necessary to secure dismissal with prejudice of all claims asserted between them in this cause. The entry of judgment of dismissal with prejudice of all claims asserted between them is hereby expressly made a condition precedent to the effectiveness of this Settlement Agreement. If the above referred condition precedent has not been fulfilled within ten (10) days of the execution of this Settlement Agreement, this Agreement shall become null and void and of no force and effect.

(8) This Settlement Agreement shall be binding upon and inure to the benefit of the respective heirs, legal representatives, successors and assigns of the parties hereto.

IN WITNESS WHEREOF, the parties have executed this Settlement Agreement as of the date first hereinabove set forth.

*_____
Anthony Duke

*_____
C. Bruce Stratton
Attorney for Anthony Duke

UNITED STATES STEEL CORPORATION

By: /s/ _____
Travis C. Broesche

STAUFFER CHEMICAL CO., & PHOSPHATE CHEMICALS, INC.

By: /s/ _____
F. Walter Conrad

* This instrument was not signed nor approved either in form or contents by the Petitioner or his attorney.

APPENDIX "B"

UNITED STATES STEEL CORPORATION, ET AL,
Plaintiffs-Appellees

v.

ANTHONY DUKE,
Defendant-Appellant

NO. 77-1250

Summary Calendar*

Appeal from the United States District Court
for the Southern District of Texas

United States Court of Appeals
Fifth Circuit

September 27, 1977

Before AINSWORTH, MORGAN and GEE,
Circuit Judges.

PER CURIAM:

In 1973, plaintiff United States Steel Corp. (U.S. Steel) sued defendant Anthony Duke, who had refused to pay for fertilizer purchased on open account. As a defense and as a counterclaim against U.S. Steel and the ferti-

lizer's manufacturers, Stauffer Chemical Co. and Phosphate Chemicals, Inc., Duke claimed that the fertilizer was defective and damaged his rice crop. On January 29, 1976, U.S. Steel accepted Duke's previous offer to pay $6,750.00 (About one-third of the amount due) in settlement of the account. As Duke later refused to recognize that any settlement had been reached, U.S. STEEL filed a motion to enforce the oral settlement agreement. After an evidentiary hearing, the district judge granted the motion. Duke now appeals that decision.

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* Rule 18, 5 Cir., see Isbell Enterprises, Inc. v. Citizens Casualty Co. of New York, et al., 5 Cir. 1970, 431 F.2d 409, Part I.

A court may enforce an oral settlement agreement. *See* Strange v. Gulf & South American Steamship Co., 5 Cir., 495 F.2d 1235 (1974). Therefore, the district court's judgment must be affirmed if there is evidence to support the determination that an oral agreement existed. In our view, the record contains sufficient evidence to permit that conclusion. Duke's initial settlement offer was never explicitly withdrawn. All of the lawyers involved in the negotiation believed an agreement had been reached. Finally, when Duke was first informed that U.S. Steel had accepted the offer, he did not indicate that the original offer was no longer open.

AFFIRMED.

APPENDIX "B-1"

UNITED STATES STEEL CORPORATION, ET AL,
Plaintiffs-Appellees

v.

ANTHONY DUKE,
Defendant-Appellant

NO. 77-1250

Summary Calendar

United States Court of Appeals
For the Fifth Circuit

D.C. Docket NO. CA-72-G-17

Appeal from the United States District Court
for the Southern District of Texas

Before AINSWORTH, MORGAN and GEE,
Circuit Judges.

JUDGMENT

This cause came on to be heard on the transcript of the record from the United States District Court for the Southern District of Texas, and was taken under submission by the Court upon the record and briefs on file, pursuant to Rule 18;

ON CONSIDERATION WHEREOF, It is now here ordered and adjudged by this Court that the judgment of the said District Court in this cause be, and the same is hereby, affirmed;

It is further ordered that defendant-appellant pay to plaintiffs-appellees, the costs on appeal to be taxed by the Clerk of this Court.

September 27, 1977

Issued as Mandate:

APPENDIX "C"

UNITED STATES STEEL CORPORATION, ET AL.,
Plaintiffs-Appellees

versus

ANTHONY DUKE,
Defendant-Appellant.

NO. 77-1250

United States Court of Appeals
For the Fifth Circuit

Appeal from the United States District Court
For the Southern District of Texas

October 26, 1977

ON PETITION FOR REHEARING
(October 26, 1977)

Before AINSWORTH, MORGAN and GEE, Circuit Judges.

PER CURIAM:

IT IS ORDERED that the petition for rehearing filed in the above entitled and numbered cause be and the same is hereby DENIED.

ENTERED FOR THE COURT:

/s/ _____
United States Circuit Judge

APPENDIX "D"

UNITED STATES COURT OF APPEALS
FIFTH CIRCUIT

Office of the Clerk

November 8, 1977

Mr. Anthony Duke
P. O. Box 712
Winnie, TX 77665

No. 77-1250 - U.S. Steel Corporation, ET AL. v.
Anthony Duke

MANDATE STAYED TO AND INCLUDING
December 8, 1977

Dear Counsel:

The Court has this day granted a stay of the issuance of the mandate to the date as shown above. If during the period of the stay there is filed with the clerk of this court a notice from the clerk of the Supreme Court that the party who has obtained the stay has filed a petition for the writ in that court, the stay shall continue until final disposition by the Supreme Court. Upon the filing of a copy of an order of the Supreme Court denying the petition for writ of certiorari the mandate shall issue immediately under Rule 41, FRAP.

Under revised Rule 21 (1) of the Supreme Court effective July 1, 1970, a record is no longer required in connection with an application for writ of certiorari, and therefore will not be routinely prepared by this office (38LW 3502).

A copy of the opinion, judgment and denial of rehearing are still required by the Supreme Court to be incorporated as an appendix to your petition. Enclosed are copies of the said documents which have been entered in this cause.

Very truly yours,

EDWARD W. WADSWORTH,
Clerk

By: /s/ _____
Deputy Clerk

enc.

cc: Mr. Travis C. Broesche
Mr. F. Walter Conrad